

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20240000244

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 5 October 2023
- Self-Authored Statement
- Standard Form (SF) 600 (Health Record), 18 March 1995
- SF 600, 19 May 1995
- Laboratory Document, 19 May 1995
- SF 600, 23 May 1995, 15 May 1996
- SF 513 (Medical Record), 4 April 1996
- SF 600, 10-17 April 1996
- SF 513, 29 April 1996
- SF 600, 29 April 1996, 30 July 1996, 28 October 1996, 3 January 1997

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant annotated on her DD Form 149 post-traumatic stress disorder (PTSD), other mental health, and sexual assault and/or harassment as issues/conditions related to her request. She states:
 - a. All of the actions leading up to her discharge were because she was subjected to an unwanted sexual advance from her recruiter who later in school discovered had herpes, which she ended up contracting. That development changed her demeanor from that of a mild, timid, young lady, to a mentally distraught and volatile individual.

b. She joined the Army because she valued the opportunities it presented and she wanted a better life. Her recruiter, Sergeant S___ confirmed the benefits she could obtain as a service member. She trusted SGT S___ because he was the Army authority in her opinion. With that trust they became friends only and she had no sexual interest in him. It did not seem to matter to him in the days prior to her deployment to bootcamp.

c. She recalls the sexual advances he made upon her and she denied them but he would not take no for an answer. He forcefully bent her over a sink and proceeded to have his way with her. She was fairly timid at that stage in her life, primarily due to being forced to perform a sexual act on a neighborhood bully when she was 7 years old. Sgt S___ took advantage of her weakness and she did nothing because she did not think anything would or could be done. She wanted to be the best Soldier she could be considering she was leaving the next day.

d. During basic training she did not have a menstrual cycle therefore she had no idea she contracted genital herpes until she went to Military Intelligence (MI) School. A few weeks after settling she woke up to painful and swollen genitals. She went to the base hospital and knowing SGT S___ was the only person she had contact with she became enraged. Her mental state was at its lowest and she was lost. She tried to educate herself on the disease but mostly she was depressed about it.

d. While at advanced individual specialty training her heavy drinking began. She drank to drown out the depressive thoughts about her life because no matter what happened she knew intimacy with anyone would be forever changed. The alcohol numbed those thoughts. While in MI School she started to use drugs with fellow service members and she had a fight with one of her suitemates. Ultimately, she received nonjudicial punishment. She graduated from MI School.

e. She was sent to Fort Meade and thought things would get better but she faced more sexual harassment from male and female Soldiers. She could not handle the advances and didn't know where or who to turn to. She drank and did drugs to suppress the shame and pain she was feeling. She was sent to rehabilitation on base and assigned to a detail at the battalion headquarters. She confided to her first sergeant about her trauma and how depressed and alone she felt. That backfired on her and her first sergeant had his own motives. One weekend he entered her room unannounced using the master key while assigned the CQ duty. Her roommate heard her speaking loudly and came in he denied coming into her room. It was his word against hers.

f. That Monday she requested release from her commanding officer but heard nothing. She did everything she could think of to get out. Finally, she was told she would be demoted because of the incidents of drug use and the incident with her first sergeant.

g. She joined the Army because of advertisements during that time made her feel like the Army was something she could belong to. She had a struggle fitting in all her life but when she discovered it was much the same and that senior members were not held accountable for their actions it sent her on a spiral of self-destruction.

h. Eventually she went to drug rehabilitation and eliminated the drug use in her life. With help of a loving brother and his constant encouragement she persevered and succeeded in finding a career in accounting in which she has been excelling for 23 years. She is still living with herpes. She is constantly reminded of the violation of trust. She would like her discharge changed but would also like to be considered for mental health and PTSD disability because she will never be rid of this trauma.

3. The applicant provides copies of 13 pages of medical documents outlining her conditions, her treatment and the prescription medications issued to her for genital herpes while she was on active duty.

4. A review of the applicant's service records show:

a. On 2 March 1995, she enlisted in the Regular Army.

b. On 25 July 1996, she accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully using cocaine near Sumter, SC on or about between 18 May 1996 and 22 May 1996. Her punishment included reduction to private (PV2)/E-2.

c. A DD Form 2624 (Specimen Custody Document-Drug Testing), dated 27 February 1997, shows a urine specimen collected from her on 27 February 1997 tested positive for cocaine. The test basis of the specimen custody document (DD Form 2624) shows the specimen was conducted for the purpose of a US (Unit Sweep inspection).

d. On 12 March 1997, she provided a sworn statement in connection with a Criminal Investigation Division Report of Investigation (ROI) Number 088-97-XXXXXX. This statement reads, in part: "I [Applicant] want to make the following statement under oath: On 26 February 1997, I was in the company area and had overheard that my company was going to have a urinalysis the next day. In the afternoon the same day my platoon sergeant came to me and told me I was to take a urinalysis the next morning at 0630. I had been told since I had tested positive to cocaine and marihuana the last time I was going to be reclassified. I did not want to be a cook or a truck driver, so I decided to go to Washington DC that night and buy some cocaine so that I would test positive the next morning on the urinalysis. The evening of the 26 February 1997, I traveled to Washington, DC where I went to a project call Author Caper. It is a project housing spot in DC. I purchased cocaine there from a black male who I do not know who his was,

that was selling it on the street corner. I bought a \$25 bag from him. I then proceeded to Mickey's Pub, Washington, DC and had a couple of drinks and did the cocaine there. I snorted about half of the bag and flushed the rest of it down the toilet in the bathroom. The next day I did the urinalysis and today my commander called me into her office and told me that I had tested positive on the urinalysis."

e. On 19 March 1997, court-martial charges were preferred against her. A DD Form 458 (Charge Sheet) shows, while assigned to Headquarters and Operations Company, 741st Military Intelligence Battalion, Fort Meade, she was charged with wrongful use of a controlled substance, cocaine, at or near Washington, DC on or about 26 February 1997.

f. On 3 April 1997, she consulted with legal counsel and requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. Her rank was listed as PV2/E-2. She acknowledged:

- she was making the request of her own free will
- at least one of the charges preferred against her under the UCMJ authorized the imposition of a bad conduct or dishonorable discharge
- she was guilty of at least one of the charges against her or of a lesser included offense
- she did not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- she would be deprived of many or all Army benefits, she may be ineligible for many, or all benefits administered by the Veterans Administration,
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she may expect to encounter substantial prejudice in civilian life
- there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency
- she must apply to either the Army Discharge Review Board or the Army Board for Correction of Military Records if she wished a review of her discharge
- she realized that the act of consideration by either Board did not imply that her discharge would be upgraded
- she may submit a statement in her own behalf with this request and indicated a statement would be provided

g. On 3 April 1997, her company commander recommended approval of her request.

h. On 21 April 1997, the Commanding Officer, 741st Military Intelligence Battalion; and the Commanding Officer, 704th Military Intelligence Brigade recommended approval of her request.

i. On 24 April 1997, the separation approval authority, approved her request and directed her discharge with issuance of an other than honorable conditions characterization of service and her reduction to the lowest enlisted grade.

j. On 7 January 1997, she was discharged from active duty. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- Block 12c (Net Active Service This Period) – 2 years, 2 months, and 1 day
- Block 13 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – Army Achievement Medal, National Defense Service Medal, Army Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar
- Block 24 (Character of Service) – Under Other Than Honorable Conditions
- Block 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- Block 26 (Separation Code) – KFS
- Block 27 (Reentry code) – 3
- Block 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

5. On 12 May 1999 and in Docket Number AR1999025492, the Army Discharge Review Board found her discharge was both proper and equitable and voted not to grant relief.

6. On 1 April 2024, the U.S. Army Criminal Investigation Division, provided a response to ARBA in response to a request for any redacted harassment/military sexual trauma reports but a search for such CID reports or investigations revealed no records pertaining to the applicant.

7. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her 2 May 1997 discharge characterized as under other than honorable conditions and, in essence, referral to the Disability Evaluation System (DES). On her DD 149, she has indicated that PTSD, other mental health conditions, and sexual assault/harassment are issues related to her request. She states:

“This correction should be made because I was discharged due to subsequent use of drugs following a sexual assault, which was never addressed by anyone in the Army. My only way of dealing with the assault was to suppress my feelings. This has caused permanent damage to my mental state and well-being.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows she entered the regular Army on 2 March 1995 and was discharged on 2 May 1997 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Discharge in Lieu of Trial by Court-Martial. There is no period of Service in a hazardous duty pay area.

d. On 25 July 1996, the applicant received an Article 15 for wrongful use of cocaine.

e. A Charge Sheet (DD form 458) shows the applicant was charged with wrongful use of cocaine on or about 26 February 1977.

f. On 3 April 1997, the applicant voluntarily requested discharge in lieu of trial by court-martial under chapter 10 of AR 635-200 and declined the opportunity to receive a separation physical evaluation. Her request was approved on 24 April 1997 with the directives she be reduced in grade to private (E-01) and issued an Under Other Than Honor Conditions Discharge Certificate.

g. No medical documentation was submitted with the application and her period of service predates the EMR. JLV show the applicant is not registered with the VA. There is no evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness. Thus, there was no cause for referral to the DES prior to her discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD due to military sexual trauma

(2) Did the condition exist or experience occur during military service? Applicant asserts PTSD due to military sexual trauma.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes: There was no probative evidence submitted, found in EMR or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As there is an association between MST and self-medication with illicit drugs, there is a nexus between her experience of MST and cocaine use.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding no evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards. The opine found insufficient evidence to support referral to the DES prior to her discharge.

2. The Board applauds the applicant's post service achievements in the accounting field over the past 23 years. The Board noted, the applicant provided no letters of support for the Board to weigh a clemency determination. The Board found there is insufficient evidence of in-service mitigating factors to overcome the misconduct of repeated cocaine and cannabis drug use. Careful consideration was given to the applicant's self-authored assertion of MST. Furthermore, the Board understands many sexual assault victims do not sometimes report the incident. However, when prepondering evidence, there are sometimes symptoms of MST displayed by victims prior to their separation. Personal MST statements provided to the VA are not always corroborated. Based on the evidence and medical opine, the Board determined the the character of service ethe applicant received upon separation was not in error or unjust and warrants an upgrade. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active-duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness),

chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full-time training duty. The separation program designator "KFS" corresponded to "In Lieu of Trial by Court-Martial," and the authority, Army Regulation 635-200, Chapter 10.

5. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions,

official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

9. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//